

1 Q. Focusing again on the same time period,
2 did you or any representative of the hotel ever
3 engage in preliminary lease negotiations with David
4 Gardner or Raystay concerning the use of the hotel
5 as a LPTV site?

6 A. In your definition, what is a
7 preliminary agreement?

8 Q. Well, in the course of -- Have you had
9 occasion -- Your testimony earlier was that you
10 have had occasion to negotiate and approve leases
11 involving the hotel?

12 A. Yes.

13 Q. In your understanding of how lease
14 negotiations occur, have you had occasion during
15 the periods in question, July, 1990, through
16 December, 1991, did you or, to your knowledge, any
17 other representative of the hotel ever engage in
18 preliminary lease negotiations concerning the
19 hotel's facilities for use as a LPTV site?

20 A. The only answer I can give you is there
21 was a letter of intent signed. I don't know the
22 date of the letter of intent.

23 I don't know if it falls into this time
24 frame you're giving me or not. That's the only
25 recollection I would have.

1 Q. So, other than whatever communications
2 occurred in the context of that letter, you are
3 unaware of other lease negotiations?

4 A. That's correct.

5 Q. Or preliminary lease negotiations?

6 A. That's correct.

7 MR. HOLT: I would like to ask the
8 Court Reporter to mark a document as deposition
9 exhibit three. It's a four-page document stamped
10 on the front, duplicate.

11 And I will give a copy to counsel for
12 Glendale.

13 MR. COHEN: Thanks. This is deposition
14 exhibit three?

15 MR. HOLT: Exhibit three.

16 (Whereupon, the Court Reporter marked
17 for identification as Deposition Exhibit March
18 three, a letter of December 20, 1991.)

19 BY MR. HOLT:

20 Q. The document in the left-hand-side
21 corner has a stamp, 80006, on the first page, and
22 there are stamps -- sequential numbers through the
23 next four pages. Again, the bottom left-hand
24 corner.

25 If you would turn to page three of the

1 document, which has the date stamped, 80003. If
2 you would refer to the fourth paragraph.

3 I'm sorry, make that the third
4 paragraph.

5 MR. SHOOK: Also to clarify something,
6 I believe the date that you are referring to is
7 80008.

8 MR. HOLT: I'm sorry, my mistake. My
9 copy isn't very clear. It's 80008.

10 If you turn to the third paragraph, the
11 fifth line, it begins with the word, it. It reads:
12 It has entered into lease negotiations with
13 representatives of the owners of the antenna site
14 specified in the applications, although those
15 negotiations have not been consummated.

16 Again referring to the period, July,
17 1990, through December, 1991, would you please
18 state for the record your reaction, if any, to the
19 sentence I have just read as it relates to the
20 hotel?

21 A. I have no recall of ever entering any
22 lease negotiations.

23 Q. Do you consider that statement to be
24 incorrect?

25 A. The way it's stated, to the best of my

1 knowledge it would stand incorrect, yes.

2 MR. HOLT: I would like to ask the
3 Court Reporter to mark a document as deposition
4 exhibit number four. Let the record reflect I'm
5 handing a copy to -- I'll start with the Court
6 Reporter, a copy to counsel for Glendale.

7 MR. COHEN: Is it four?

8 MR. HOLT: Yes. A copy to counsel for
9 the witness and a copy to the witness.

10 (Whereupon, the Court Reporter marked
11 for identification as Deposition Exhibit March
12 four, a document.)

13 BY MR. HOLT:

14 Q. This is a three-page document. At the
15 top it's identified as a declaration. And on the
16 third page it's dated June 3rd, 1993, and there is
17 a signature which states it was signed by the
18 person called David A. Gardner.

19 If I can refer your attention to the
20 third page of the declaration -- I'm sorry, the
21 second page of the declaration.

22 Please forgive me, look at the first
23 page of the declaration.

24 The fourth paragraph beginning with the
25 words: In the early fall.

1 If you read down five lines, beginning
2 with the sentence: I called; would you please
3 read: I called Ready Mixed Concrete Company, the
4 owner of the Lancaster site, and the Quality Inn,
5 the owner of the Lebanon site.

6 I was informed by representatives of
7 both companies that they were still willing to
8 negotiate an agreement to make their respective
9 properties available as sites for LPTV stations.

10 I generally discussed possible lease
11 terms with both individuals.

12 Focusing your attention to the first
13 sentence of that phrase I just read, would you
14 please state your reaction for the record, if any,
15 as to whether you received -- Do you recall
16 receiving a call from a representative of Raystay?

17 A. Number one, I'm not the owner of the
18 Lebanon site.

19 Q. As general manager of the Quality Inn,
20 do you recall receiving any call from David A.
21 Gardner?

22 A. In 1991, as I have stated numerous
23 times before this afternoon -- or morning -- No, I
24 have no recall.

25 Q. Do you recall ever being informed by

1 David Gardner that -- I'm sorry, do you ever recall --
2 Focusing your attention on the sentence, I was
3 informed by -- Please forgive me.

4 MR. COHEN: Don't worry about it,
5 Chris. It happens to everybody. Don't let it
6 bother you.

7 BY MR. HOLT:

8 Q. Focusing your attention to the second
9 phrase of that, which states: I was informed by
10 representatives of both companies that they were
11 still willing to negotiate an agreement to make
12 their respective properties available as sites for
13 LPTV stations; would you please state for the
14 record your recollection, if any, to the accuracy
15 of that statement?

16 A. I absolutely -- I have no recall as to
17 this type of conversation.

18 Q. Would you focus on the final sentence
19 of what I have just read, which begins: I
20 generally discussed possible lease terms with both
21 individuals?

22 And please state your reaction, if any,
23 for the record as to the accuracy of that
24 statement?

25 A. I have no recall of making that

1 comment.

2 Q. No, I'm sorry, this is a statement that
3 was made by David A. Gardner. Would you state your
4 reaction to the statement as to whether it's
5 accurate or not?

6 A. I have no lease terms. I have no
7 lease. I did not negotiate an agreement. I don't
8 know what else you want me to say. I'm missing the
9 question.

10 Q. Well, a statement was made by David
11 Gardner as indicated by the fact that this is a
12 declaration in which he stated: I generally
13 discussed possible lease terms with both
14 individuals.

15 And I am asking for your reaction as to
16 the accuracy of that statement.

17 A. The statement is taken out of the
18 context of time. Okay, I have told everyone in
19 this room, the initial contact with me, whether by
20 phone or in person, I told them we would be
21 interested in the possible negotiation of placing
22 some kind of antenna, satellite dish, etc., on the
23 roof of the Lebanon Valley Quality Inn.

24 However, they had to test it, check it,
25 make sure it would hold the weight -- this, that,

1 the height.

2 My recall is that I signed a letter of
3 intent. Nothing was ever discussed by me.

4 My recall is that nothing was ever
5 discussed by me concerning the specifics of any
6 type of future agreement.

7 Furthermore, without having
8 specifications in front of me, how could I go into
9 negotiations as far as trying to finalize these
-10 arrangements?

11 Does that answer the question?

12 Q. I think it does. I just have a couple
13 more questions for you.

14 Going back to the initial contact that
15 you spoke about that occurred in 1989, do you
16 recall at the time of that contact whether there
17 was another antenna on the roof of the hotel?

18 A. Yes.

19 Q. And what was the size of that other
20 antenna, if you recall?

21 A. My recollection is it's still there.
22 It's a small whip antenna.

23 Q. Did you discuss with the person that
24 you spoke with back in 1989 whether the structure
25 that he was proposing to put on the roof would be

1 comparable in size to the antenna that was on your
2 roof at that time?

3 A. I discussed -- I remember discussing
4 the possible interference in reception of that
5 antenna.

6 We didn't get into -- I don't recall
7 getting into the exact height in relation to that
8 antenna.

9 But I remember I was left with the
10 impression that it would be something that would
11 not -- Unobtrusive. It would not be aesthetically
12 degrading to the property. I made that very well
13 known.

14 And, as I stated to you, when I got a
15 copy of the antenna as presented to me, I almost
16 fell over.

17 That was not the description I was
18 given during the initial contact.

19 Q. Do you recall whether you discussed
20 with the person you spoke with whether the proposed
21 antenna would pose any radiation hazard?

22 A. I don't recall discussing radiation. I
23 was just concerned about disrupting the reception
24 of the existing antenna.

25 Plus I want to add at this point, and I

1 think I said it earlier -- perhaps I didn't: Any
2 final negotiations of this magnitude, our attorney
3 would have been brought in, as he will validate.

4 Contracts of this caliber would be run
5 through the attorney to draw it up from A to Z.

6 It would have to be, first of all,
7 presented to the board of directors and okayed by
8 the board of directors.

9 As I stated at this meeting: Did I
10 ever bring this up to the board? The answer is:
11 No.

12 It was too tentative. I didn't have
13 sufficient information. I didn't have diagrams,
14 schematics, nothing.

15 So it was so tentative that I thought
16 this thing went south. I thought it was done. I'm
17 shocked this is still alive.

18 Meaning I thought it died as a project.

19 Q. At any time after the initial contact
20 with the individual you spoke with in 1989, were
21 you ever provided with a written copy of this
22 sketch that you have referred to earlier?

23 A. No.

24 Q. At any time after that visit, that
25 contact, were you ever provided with an oral

1 description of the structure depicted in the
2 sketch?

3 A. To the best of my knowledge, no.
4 Definitely not.

5 Q. At any time after the contact, were you
6 ever provided with any information about the size
7 or weight of the structure depicted in the sketch?

8 A. No, not to my knowledge.

9 Again, I make the statement, when I saw
10 the sketch you presented to me, I went into shock.

11 Had I known previous to the literature
12 you sent me in the mail about the height, weight,
13 size, or anything related to the nature of this
14 particular antenna, why would I have gone into
15 shock?

16 Q. Well, you have referred earlier to the
17 letter of intent.

18 In light of what you have seen in the
19 antenna sketch, would you have signed the letter of
20 intent that you referred to?

21 A. No.

22 Q. Who, to your knowledge, during the
23 period, July, 1990, through December, 1991, had any
24 information about your previous contact with the
25 individual who called you about the LPTV site?

1 A. Don Yordy and my administrative
2 assistant at that time, who I don't know who -- I
3 would have to look in the personnel records. I
4 don't know who that was.

5 Q. The administrative assistant?

6 A. My secretary.

7 Q. But focusing on the period, July, 1990
8 through December, 1991, do you recall whether you
9 had the same administrative assistant that you had
10 in 1989?

11 A. I don't recall that.

12 Q. You don't recall if there is -- When
13 you were initially contacted about the LPTV site in
14 1989, you had an administrative assistant, correct?

15 A. I have had one ever since I have been
16 there, yes.

17 Q. And you don't recall whether that was
18 the same person who was there?

19 A. (Indicates no.)

20 Q. If anyone else at the hotel, any of
21 your department heads had received a call on the
22 matter involving LPTV stations and possible use of
23 the hotel as a site, what, if anything -- Let me
24 rephrase.

25 Does the hotel have any policy about

1 referring matters to you that -- If one of your
2 department heads receives a call or communication
3 of any sort regarding a matter with which they are
4 unfamiliar, what, if anything, is the hotel's
5 policy as to how that individual should handle that
6 contact?

7 A. Simple: They refer it to the manager.

8 Q. And the manager is --

9 A. Barry L. March.

10 Q. And those are standard instructions?

11 A. Yes.

12 Q. I want to apply that question, the same
13 question, to the officer of the Quality Inn who
14 maintains offices at the hotel.

15 If any of those individuals had
16 received a call concerning a matter involving LPTV
17 facilities --

18 A. Let me make that easy for you. There
19 was a retirement of one of our officers who worked
20 out of her home entirely.

21 The new person that took it over moved
22 the file cabinets into this -- I described where on
23 the hotel property. I think he was there one day
24 or maybe several hours at a desk, and from that
25 time period he has been working out of his home.

1 A. So the likelihood of an officer
2 answering the phone on business is so remote, you
3 know. It's hardly worth thinking of questioning.

4 Q. Do you recall when that transition
5 occurred?

6 A. Fox retired about two years ago.

7 MR. KRAUSE: About a year ago.

8 THE WITNESS: Maybe about a year ago,
9 about a year.

10 Plus Mr. Hill, who is the secretary-
11 treasurer, would have either referred the call to
12 me or taken a message and turned it over to me.

13 He would not have handled and conducted
14 any business transaction of this nature, or
15 conversation of this nature, without coming
16 immediately to me and sharing it.

17 MR. HOLT: I have no further questions.
18 Thank you.

19 MR. SHOOK: I have a few.

20 EXAMINATION

21 BY MR. SHOOK:

22 Q. With respect to the letter of intent
23 that has been referred to in a number of your
24 responses, could you describe for us what that
25 letter of intent is?

1 A. You do not have a copy?

2 Q. I, personally, do not.

3 A. Okay. The letter of intent is a letter
4 that, basically, has information in it.

5 There is one line checked with an X,
6 and it simply says it on the top: Letter of
7 intent.

8 And it is very -- It's going to be
9 admitted, isn't it? I mean I'm not a lawyer.

10 I won't look at it that way. My
11 signature is affixed to the bottom. It says: See
12 top letter of intent, and it has an X on one of the
13 lines, one of the multiple lines that go across.

14 It has a height of building as far as
15 above sea level, how high we are above sea level.

16 It has base, thirty feet, period, as
17 far as the dimension and things, basically that.
18 That's the stuff that's on there.

19 It does not have the height of the
20 antenna or how many antennas, to my knowledge, from
21 reading it, my recall.

22 Very vague in nature. It does have as
23 far as dollars, five hundred dollars a month,
24 period.

25 Q. This was a document that you prepared

1 and sent to someone?

2 A. No, sir.

3 Q. Can you tell me then, was this a letter
4 that was sent to you?

5 A. Yes.

6 Q. And did you check and sign?

7 A. I didn't check anything, sir.

8 Q. You just signed your name?

9 A. Yes.

10 Q. This letter came from Raystay to you?

11 A. To the best of my knowledge, yes.

12 Q. With respect to the antenna that you
13 have referred to that's presently on the roof of
14 the hotel, is that the only antenna up there?

15 A. To the best of my knowledge, yes.

16 Q. And is that the only antenna that has
17 been up there for the past five years?

18 A. It was there before I came on June 3rd,
19 1985.

20 Q. Could you tell us what this antenna is
21 for?

22 A. I believe it's an antenna for the cable
23 TV. I'm not sure. I wanted to check that before I
24 came. I don't recall, but I think that's what it's
25 for.

1 Q. Your understanding is that it's the
2 antenna to receive signals? In other words, for
3 there to be some kind of television service in the
4 hotel, that that's what this antenna is there for?

5 A. Excuse me, correction. It just came to
6 my memory. I rent that space.

7 Q. You, personally, rent that space?

8 A. The Lebanon Valley Quality Inn rents
9 space to a company that gives us a monthly
10 installment for that space on a rental basis.

11 Q. So there is a lease agreement
12 concerning this antenna, and the hotel receives a
13 certain amount of money each month?

14 A. That's correct.

15 A. It's a very small antenna. To the best
16 of my knowledge I don't even think you can see it
17 from ground level. It's a whip antenna. It's
18 single. It's thin.

19 Q. Do you recall there being any
20 discussions with anyone as to what would happen to
21 that antenna and/or the lease that concerns that
22 antenna in the event an LPTV site was placed at
23 your hotel?

24 A. Yes. As I stated earlier, I
25 acknowledged there was an antenna up there.

1 As I stated earlier, I was concerned
2 about the proposed antennas interfering with the
3 reception of the existing antenna. I remember that
4 vividly.

5 Q. That's a conversation that you would
6 have had with the Raystay representative?

7 A. Initial contact, yes.

8 MR. SHOOK: No further questions.

9 MR. COHEN: Thank you, Mr. March. Can
-10 we go off the record?

11 (Whereupon, there was a discussion off
12 the record.)

13 (Whereupon, at or about 12:50 p.m., the
14 deposition was concluded.)

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1
2 REPORTER'S CERTIFICATE
3
4

5 I HEREBY CERTIFY that I was present
6 upon the hearing of the above-entitled matter and
7 there reported stenographically the proceedings
8 had and the testimony produced; and I further
9 certify that the foregoing is a true and correct
10 transcript of my said stenographic notes.
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16 Alfred W. Kershaw

17 ALFRED W. KERSHAW, RPR

18 Official Court Reporter
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that I have read the foregoing deposition given by me on September 10, 1993, and I certify it to be a true and correct transcript of my said deposition. In the event that I desire to make changes in the form or substance of my deposition, said changes will be listed below along with my reasons for making them.

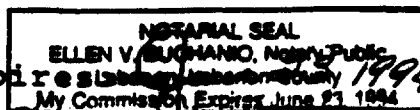
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115 19 checked date installed on contract.

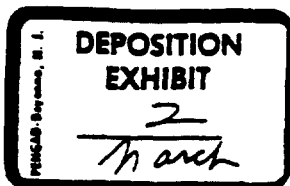
Barry L. March

Sworn and subscribed to before
me this 11th day of October, A.D., 1993.

Ellen V. Buchanan

My Commission Expires June 23, 1994





AFFIDAVIT OF BARRY L. MARCH

I, Barry L. March, hereby declare as follows:

1. Since June 3, 1985, I have been employed as General Manager of the Quality Inn Hotel, 625 Quentin Road, Lebanon, Pennsylvania (hereinafter the "Hotel"). Since 1988, I also have been a member of the Board of Directors of Greater Lebanon Hotel Enterprises, Inc., which is the corporate franchisee of the Hotel. As reflected in the documents attached to this Affidavit as Appendix A, I am the person identified in the Federal Communications Commission ("FCC") applications of the Raystay Company ("Raystay") for authority to construct low power television stations on Channels 38 and 55 in Lebanon, Pennsylvania.

2. To the best of my recollection, sometime in early 1989 I was contacted either by telephone or in person, I cannot recall which, by an individual who expressed an interest in placing a small broadcast antenna on the roof of the Hotel. The caller (or visitor), whose name I cannot recall, explained that a survey had been conducted of the Lebanon Valley area and that the roof of the Hotel appeared to be one of the highest points in the area. He noted that a small antenna was already located on the roof and he asked whether the Hotel might be interested in renting out space for a second antenna. The caller led me to believe that he was talking about a thin, whip-like antenna or

some sort of small dish that would not be readily noticeable to our patrons.

3. Based on this impression, I told the caller that the Hotel might be interested in negotiating a lease, but that he should contact me again when he was ready to discuss terms. To the best of my knowledge, we did not discuss the prospective terms under which such a lease might be negotiated, nor did we discuss the specifics of his proposal for the antenna. I recall that, toward the end of the conversation, I gave him permission to inspect the roof to determine whether it would suit his needs. To the best of my recollection, the entire conversation lasted no more than a few minutes. During that time, I expressed nothing more than general interest in his vague proposal.

4. I believe that shortly after our conversation, either the caller or someone on his behalf visited the Hotel to examine the roof.

5. I recently have been shown the engineering sketch attached to this Affidavit as Appendix B. I understand that Raystay submitted this sketch to the FCC in applications it filed in March 1989 for two low power television station licenses. In reviewing the sketch, I can state with certainty that I did not tell the caller with whom I spoke in early 1989 that the Hotel would consider leasing roof space for a structure

like the one depicted in the sketch. As stated above, the caller led me to believe that he had in mind a modest, physically unobtrusive antenna, not an 86-foot structure sufficient to support two broadcast antennas. If the caller had told me of his true plans, I would have had immediate concerns about the obvious aesthetic problems that such a structure would cause, as well as concerns about the Hotel's capacity to support such a structure, potential hazards to our guests, the cost of liability insurance, and the Hotel's ability to obtain the necessary zoning permits. In light of those concerns, I would have told the caller that the proposal would have to be considered by the Hotel's legal counsel and its Board of Directors. I was certainly not aware that the caller was planning to ask the FCC for permission to construct the 86-foot tower depicted in Appendix B on the roof of our Hotel. Had I known that fact, I would have declined his proposal without consideration.

6. I also have reviewed the statement attached hereto as Appendix C, which I understand was submitted to the FCC by Raystay in December 1991 and again in July 1992 to report the status of Raystay's construction efforts. To the best of my knowledge and belief, two assertions made in that statement are untrue. The first such assertion is that Raystay "has entered into lease negotiations with representatives of the owners of the antenna site specified in the applications..." As General

Manager of the Hotel, I have principal supervisory responsibility over all aspects of the Hotel's operations, including the negotiation and approval of all lease agreements involving the Hotel's facilities. Also, as a member of the Hotel owner's Board of Directors, I am aware of all contract obligations, including all lease negotiations and agreements, that may require board approval. To the best of my knowledge, the Hotel has never had any lease negotiations with Raystay or any representatives of that company. Indeed, to the best of my knowledge, apart from the single telephone call (or visit) in early 1989 described in paragraphs 2 and 3 above, no representative of Raystay has contacted the Hotel at any time about the matter.

7. Likewise, I am aware of no visit to the Hotel by any representative of Raystay other than the single visit described in paragraph 4 above. To the best of my recollection, that visit occurred sometime in early 1989, shortly after I received the telephone call (or visit) described above. The Hotel's current maintenance chief, who has been employed in the Hotel's maintenance department since 1984, has told me that he too does not recall any visit by a representative Raystay other than the possible visit in 1989. Thus, if the statement contained in Appendix C is meant to suggest that representatives of Raystay have inspected the Hotel roof at any time since their initial visit in early 1989, that claim is not true.